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10/780,831

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01/23/2009

EXAMINER

GISHNOCK, NIKOLAI A

ART UNIT

PAPER NUMBER

3715

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/780,831

**Applicant(s)**

HEWSON, ROGER D.

**Examiner**

Nikolai A. Gishnock

**Art Unit**

3715

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 24-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### **DETAILED ACTION**

In response to Applicant's amendments filed 11/4/2008, claims 1-23 are cancelled. Claims 24-29 are pending.

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/4/2008 has been entered.

#### ***Response to Amendment***

2. The Declaration under 37 CFR §1.132, filed 11/4/2008, is insufficient to overcome the rejection of claims based upon 35 USC §103(a) as set forth in the last Office action because the facts presented are not germane to the rejection at issue. Although an affidavit or declaration which states only conclusions may have some probative value, such an affidavit or declaration may have little weight when considered in light of all the evidence of record in the application. *In re Brandstadter*, 484 F.2d 1395, 179 USPQ 286 (CCPA 1973). See MPEP § 716. In the instant Declaration #2, Affiant attempts to establish that he has: achieved "expert" status in the executive leadership development arts and as a researcher; used this expertise to research and experiment with the instant invention; and validated the supposed underlying scientific principles of the instant invention. However, Examiner's position is that Affiant has neither established that a) he is *acknowledged by peers* in the leadership development arts as a learned and respected

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"expert" in the field; b) his research and experimentation in the instant field of invention is beyond reading and highlighting of articles, *all written by others*, which would be readily available to anyone of possessing reasonable interest in the field to have read, understood, and gleaned knowledge from; nor c) presented any *evidence*, independently performed *research*, or *facts* establishing an underlying scientific principle behind the selection of exactly twelve, no more no less, cognitive functions in a personality assessment, that demonstrates any unpredictable result over any other quantity of functions in a cognitive assessment such as that of Wood.

3. In regards to paragraphs 3, 4, 9, 10(b)-(i), 11(e)-(g), & 12(c)-(e) of Arguments, Affiant asserts a degree in Civil Engineering, and significant professional experience as a yacht designer. However, neither of these establish competency in the leadership arts; as hiring and supervising of individuals is quite unlike analyzing the traits of personality or leadership; while owning businesses in the construction or ship-building arts does not seem to establish expertise in assessment of personality traits. Affiant's status as an "expert" in yacht building is not disputed; however, his credentials as an "expert" psychologist or even an "expert" leader developer is disputed as no substantial evidence has been provided. Affiant refers to being elected President of the Executive Development Institute in 1970. However, no evidence has been provided supporting this allegation. Further it is not clear to which Executive Development Institute Affiant was president of is unclear, as there are many organizations by that name. Documentation of the credentials required to be nominated for president were not submitted by Affiant. Applicant's Declaration basically amounts to an argument that he is an expert in leadership development training; however, it provides no objective evidence of non-obviousness. Further, Applicant's status as an "expert" in the field of the invention is disputed. Applicant alleges he has read books in the invention's art, but has not written any; he has

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attended seminars, but has not hosted any; further that he has sought credentials in leadership development training but has no scholarly authority to provide them. Applicant's alleged appointments by governors or presidents further fail to demonstrate any high regard for Applicant by any "experts" in psychology, personality testing, or leadership training. Affiant's experience and success on various small business advisory councils fails to establish his expertise among peers in the psychological, leadership development, or personality testing arts. While to be noted for his achievements, Affiant has not shown an adequate correlation between serving on advisory councils and research psychology, personality testing, and leadership training. The honorable Governors Baldacci, Brennan, McKernan, or King of Maine are unable to establish Affiant as any kind of "expert" in the aforementioned fields.

4. In regards to paragraphs 5, 10(a), 11(a)-(d), & 12(a), (b), (f), & (g), Affiant's private Maine Corporation, said Paragon Institute, should be demonstrated to employ many peer-recognized researchers in the fields relevant to the invention. No evidence is supplied to establish this incorporation outside the affiant's own personal interest or that said institute is held in the high regards of research peers in the psychological arts. No *research* or *evidence* gained from hiring or supervising employees, or testing their personalities, has been presented herein. Anyone of ordinary skill in the arts could have attended seminars as indicated; such attendance does not certify that peers in the psychological, leadership development, or personality testing arts believe that Affiant has any specific credibility in their field. Applicant has failed to demonstrate an expert level of skill in the psychological, leadership development training, or personality testing arts. He has failed to demonstrate any evidence or facts of any scientific research or experimentation outside of reading books, attending seminars, or hiring people. Documentation of any such research or experimentation performed by Applicant, as published in a peer-reviewed journal, is required to be convincing. The quantity of books read

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and highlighted, entries referenced, or seminars attended fails to establish that Affiant is any "expert" in the psychological, leadership development, or personality testing arts. Affiant may be at the knowledge level of any ordinary student in psychology. As such, *evidence* or *testimony* of peers in the arts has not been presented to establish Affiant's expertise in the subject matter of the instant invention.

5. Finally, Affiant has failed to present any *facts* or *evidence* as to why exactly twelve functions in the instant psychological assessment are not obvious over the provided prior art. All that has been presented are Affiant's unsupported assertions and conclusions regarding the obviousness of the invention. Objective evidence which must be factually supported by an appropriate affidavit or declaration to be of probative value includes *evidence*. Although factual evidence is preferable to opinion testimony, such testimony is entitled to consideration and some weight so long as the opinion is not on the ultimate legal conclusion at issue. See MPEP §716.01(c). No evidence showing unexpected results has been provided. Conclusory statements that results were "unexpected," unsupported by objective factual evidence, were considered but were not found to be of substantial evidentiary value. *Ex parte George*, 21 USPQ2d 1058 (Bd. Pat. App. & Inter. 1991). See MPEP 716.02(a). Thus, Applicant has failed to prove the non-obviousness of the claimed invention over Wood. In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

#### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 24-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood et al. (US 2002/0045154 A1), hereinafter known as Wood.

9. Wood broadly teaches: (a) defining attributes, characteristics, and purpose of each of a group of twelve cognitive functions (an objective of the invention is to provide a method and system for determining and classifying an individual's "personality DNA" based upon various personality instruments, behavior, psychographics, demographics, beliefs, and preferences, Para. 0040), wherein the twelve cognitive functions comprise reality (down-to-earth, Para. 0225), imagination (creative, Para. 0214), analysis (intelligent, understanding, Para. 0217), intuition (Individualistic, Intuitive, Para. 0211), listening (absorbed, non-verbal, Para. 0222), expressing (articulate, expressive, dramatic, Para. 0212), cooperation (Team Player, contributor, Para. 0224), independence (loners, freedom, Para. 0221), caution (conscientious, responsible, Para. 0223), courage (bold, entrepreneurial, Para. 0219), adaptability (selfless, adaptable, Para. 0213), and decisiveness (Born Leader, take-charge, Para. 0216) functions; (b) defining the structure of a cognitive architecture system with the twelve functions working together in a complementary way (In accordance with the present invention, a personality is defined depending on which groupings of characteristics are chosen. The system allows for selection of a large number of combinations of characteristics, and therefore allows for many

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different personality definitions and measuring schemes. Since a user's personality is made up of a number of characteristics, the present invention identifies and measures the characteristics of the user to classify the user into a selected personality scheme, and matches advice, content, and other people with the user based upon the results of selected tests, Para. 0045; it is understood that a grouping of characteristics that define a personality work together in a complementary way); (c) documenting the structure in a document comprising one or more of a computer, electronic medium, video, paper, verbal, and audio formats (Still another advantage of the present invention is that it makes possible the creation and delivery of content, advice, and people profiles determined from a user's responses to a series of personality tests, demographics questions, both on-line and off-line behavior, psychographic testing, life style and quality of life questions, Para. 0050; on-line behavior is at least representative of computer and electronic medium formats documenting the structure of a cognitive system); (d) utilizing the document to educate one or more individuals about the structure of the cognitive architecture system (An important advantage of the present invention is that it allows a user to perform an online self evaluation of his personality traits and characteristics, Para. 0049; self-evaluation is understood to be an educational process); (e1) enabling the one or more individuals to determine the magnitude of preference for each of the group of twelve cognitive functions of an entity (the present invention identifies and measures the characteristics of the user to classify the user into a selected personality scheme, Para. 0045), utilizing a preference survey instrument, wherein the entity is one or more individuals (user completes a personality test or a psychographics questionnaire, Para. 0176); (e2) wherein the determining of the magnitude of preference is based on knowledge of innate cognitive preferences, observed cognitive actions, and other cognitive behaviors of the entity (user's responses to a series of personality tests, both on-line and off-line behavior {observed actions and behaviors} and life style quality of life



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questions {preferences}, Para. 0050); (e3) calculating the results of the preference survey instrument (In accordance with the present invention, raw data provided by each user via their answers and behaviors and collected are scored and compiled by algorithms and standardized into alphanumeric representations, Para. 0181) and providing the results in the document format (the system gathers information from database such as declared preferences, purchase history, page view history, and click history of the individual, and compares this with the personality, psychographic, behavior, and declared preference relevance values from all users to determine the optimum content to display to the user. Content selected includes, but is not limited to, raw scores on each scale, graphical representations of the scores, the title of the node or classification, and descriptive text of the user's personality classification. Content selected may also include stories, news, articles, and information, Para. 0295-0297; the results are understood to include at least computer and electronic medium formats); (f) enabling the one or more individuals to calculate the results of the preference survey instrument to quantify the magnitude of preference for each of the functions, and to document a preference survey report indicating the magnitude of preference for each of the twelve cognitive functions in one or more of a computer, electronic medium, video, paper, verbal, and audio formats (Para. 0181 and 0295-0297; the user of Wood's system is, in this case, an enabled individual); (g) enabling one or more individuals to utilize the cognitive architecture system of the twelve cognitive functions and the determination of the magnitude of preference (dominance of a trait, Para. 0019) for: (g1) defining the entity's magnitude of preference for the twelve functions (the system compares a user's scores and results against the classification scheme, the system then determines the closest match and presents that classification to the user, Para. 0282); (g2) defining the strengths and weaknesses of the entity (the degree to which the user scored, or was categorized in a particular scale, is represented numerically and presented with the letters to

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represent relative strength of the scales, Para. 0233); (g3) defining the purpose of understanding and developing better working relations based on the entity's magnitude of preference (invention matches content, advice, and people {to a user} based on the data provided and the classifications determined, Para. 0284); (g4) matching the entity with lifestyle activity roles and employment activities (A user wishing to receive career advice may be asked to provide job attribute preferences (i.e. Working outside, attention to detail, working on teams). A user wishing to receive relationship advice may be asked to provide preference information for behavior in their partner, Para. 0153); (g5) assisting the entity in using each of the cognitive functions (Many companies try to improve communication between employees and offer workshops and seminars to foster better understanding and communication among employees. If each employee can understand the values and motivations behind his/her own personality type and then understand those of the other types, then personality-based conflicts can be recognized, understood, and better managed. This leads to a healthier work environment and higher productivity, Para. 0037); (g6) assisting the entity in selecting the cognitive functions most appropriate for use at a specific moment or situation (module is designed to offer personalized advice to users based upon personality, psychographics, demographics, behavior, declared preferences and any other data gathered, Para. 0305; it is understood this advice is tailored by selection of preferences for cognitive functions {personality}, and inherently selected based on the specific moment of a user's inquiry; and in regard to a specific situation {career, relationships, and financial advice}); and (g7) assisting the entity in selecting the appropriate sequence of using the cognitive functions (Para. 0037; inherently, managing and using personality functions is done in sequence); and (i) providing one or more individuals with the documentation of the preference survey instrument, the preference survey report, the structure of the architecture system, in the document format (the system can construct and/or deliver

promotions and advertisements in real time. This is used when the user views a page with ads, or the system delivers promotional materials via email or other electronic means. This information together with the rest of the user's profile is compared to all available content and is used to select the subject matter, the layout, and style of the promotional material, Para. 0299; the system can also construct page layouts according to the user's classification including color, font, use of graphics, and presentation of data, video and audio content, Para. 0303) [Claims 24 & 27].

10. Wood further broadly teaches: (a) segmenting the twelve cognitive functions into two column sets (Whole Brain Model comprises thinking styles linked to particular regions of the brain, with processes occurring on either the left or the right, Para. 0010-0019): (a1) wherein a left column set of six functions shares a left-brain style of cognition comprising the reality, analysis, listening, cooperation, caution, and adaptability functions (analytical, quantitative, fact-based, Para. 0012); and (a2) wherein a right column set of six functions shares a right-brain style of cognition comprising the imagination, intuition, expressing, independence, courage, and decisiveness functions (intuitive, holistic, integrating, synthesizing, Para. 0014); (c) defining the effectiveness of each of the functions as increased by using it in a complementary way with the opposite function in the pair; and defining how each function provides abilities the other lacks (In Herrmann's model, the four clusters of processing are typically available in each person, but one or more of the clusters is naturally dominant in a person's temperament, similar to Jung's theory. Through two decades of testing and applying his model to organizations, Herrmann amassed findings which indicate that the population is evenly distributed among these four types of thinking specialties. This data suggests that groups and societies operate in such a way that each person's specialties of thought are balanced among the group as a whole. Although people are not all created equal, different styles of thinking appear to serve equally weighed

roles in balancing each other to optimally achieve the group's common purposes, Para. 0010-0019); (d) documenting the structure of the cognitive architecture system matched in pairs in a document format (Content selected includes, but is not limited to, raw scores on each scale, graphical representations of the scores, the title of the node or classification, and descriptive text of the user's personality classification. Content selected may also include stories, news, articles, and information, Para. 0295-0297); (e) using the matched pairs of functions to enable the entity to increase competence in utilizing the functions in a complementary and effective way (If each employee can understand the values and motivations behind his/her own personality type and then understand those of the other types, then personality-based conflicts can be recognized, understood, and better managed. This leads to a healthier work environment and higher productivity, Para. 0037) [Claims 24 & 27].

11. What Wood fails to teach is: (b) defining the groups of styles as matched in pairs; wherein reality is paired with imagination, analysis with intuition, listening with expressing, cooperation with independence, caution with courage, and adaptability with decisiveness. However, Applicant has not disclosed that having the functions paired as specified solves any stated problem or is for any particular purpose. Moreover, it appears that the pairings of Extroversion with Introversion, Sensation with Intuition, Thinking with Feeling, and Judging with Perceiving of Wood (Para. 0227-0231) or the Applicant's instant invention would perform equally well for pairing cognitive functions based on left-brain- or right-brain-dominant-thinking styles. Accordingly, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have modified Wood such that the pairs consist of said functions of Reality with Imagination, Analysis with Intuition, Listening with Expressing, Cooperation with Independence, Caution with Courage, and Adaptability with Decisiveness, because such a

modification would have been considered a mere design consideration, which fails to patentably distinguish over Wood [Claims 24, & 27].

12. Wood broadly teaches the further step of six of the cognitive functions with the highest magnitudes of preference among the twelve cognitive functions referred to as potential strengths, and six of the cognitive functions with the lowest magnitudes of preference are referred to as potential weaknesses, and the further step of defining that the cognitive function with the higher magnitude of preference in each of the pairs is referred to as a potential strength, and the cognitive function with the lower magnitude of preference in each of the pairs is referred to as a potential weakness [Claims 26 & 29] (the degree to which the user scored, or was categorized in a particular scale, is represented numerically and presented with the letters to represent relative strength of the scales, Para. 0233; the relative strength of the categories of Wood implicitly may be referred to as "potential strengths" and "potential weaknesses"; Within {the} database, all of this content is stored and each element is recorded with a relative relevance strength indicator. A strength indicator value is stored in database for each node for each classification scheme available, Para. 0290) [Claims 26 & 29].

13. Wood broadly teaches the step of advising one or more individuals in appropriately utilizing the cognitive functions matched in the pairs, wherein the left-brain-style cognitive function in each of the pairs of the complementary and polar-opposite cognitive functions is most appropriately utilized before the right-brain-style cognitive function in the pair to prepare the right-brain-style cognitive function to be utilized more effectively, enabling the entity to utilize each of the group of twelve cognitive functions in the appropriate sequence to further improve competence, effectiveness, and productivity in everyday real-life situations (In the 1970's and '80s, Ned Herrmann conceived of different modes of thought occurring in various regions of the brain, in the higher level cortex and lower level limbic system. His Whole Brain Model comprised

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four quadrants of thinking styles linked to particular regions of the brain, with processes occurring on the left or right; In Herrmann's model, the four clusters of processing are typically available in each person, but one or more of the clusters is naturally dominant in a person's temperament, similar to Jung's theory. Through two decades of testing and applying his model to organizations, Herrmann amassed findings which indicate that the population is evenly distributed among these four types of thinking specialties. That is, 25% of the people show dominance in A-type analytical thinking, another 25% show dominance in B-type organized thinking, and so on around all four quadrants. This data suggests that groups and societies operate in such a way that each person's specialties of thought are balanced among the group as a whole. Although people are not all created equal, different styles of thinking appear to serve equally weighed roles in balancing each other to optimally achieve the group's common purposes. This generally fits with data in the 1970's by psychologists David Keirsey and Marilyn Bates. Their studies of married couples with Myers-Briggs testing showed an equal distribution among particular personality types: 25% were TJ's (favoring Thinking with Judging), 25% were FJ's (Feeling with Judging), 25% FP's (Feeling with Perceiving), and 25% TP's (Thinking with Perceiving). These Myers-Briggs types roughly equate to sides of the square Herrmann model (Herrman's AB side being TJ's, BC side FJ's, and so on). This data corroborates the understanding of thinking styles as a system in which each combination of thinking processes is offset and balanced by its corresponding opposite among the population as a whole, Para. 0010-0019; It is understood that the different styles of thinking reflect the use of both left-brain-style-first and right-brain-style-first thinking, and that the balancing of different styles of thinking among a population of left- and right- brain thinkers to optimally achieve the group's common purposes, causes improvement of competence, effectiveness, and productivity in everyday real-life situations) [Claims 25 & 28].

***Response to Arguments***

14. Applicant's arguments filed 11/4/2008, see pages 14 to 50, have been fully considered but they are not persuasive.

15. Applicant's request at paragraphs 211-212, that the remarks recorded in amendments #1 & #2 be considered again is granted. As such, Examiner incorporates by reference the response to those arguments, as stated in those Office Actions, dated 8/1/2007, 4/4/2008, and 8/7/2008.

16. In regards to Applicant's remarks at paragraphs 209-210, 215-216, 224, 227, 230, & 239, in order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to the Office action. The reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner's action and must reply to every ground of objection and rejection in the prior Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. See 37 CFR 1.111 and MPEP 714.02. The statement made by Examiner referring to the absence of persuasiveness of Applicant's arguments in the Office Actions mentioned above is followed by several more explaining why said arguments are not persuasive. Applicant's arguments amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. Examiner has clearly articulated the reasons why Applicant's claims are obvious over Wood; these are not mere conclusory statements or a prior art species of wider scope. In this case, the articulated rationale is that it would be a matter of obvious design choice to have defined the pairs of cognitive traits of Wood specifically as: reality

paired with imagination, analysis with intuition, listening with expressing, cooperation with independence, caution with courage, and adaptability with decisiveness. No evidence, facts or other supporting rationales have been presented why these pairing are non-obvious over Wood or how they provide some new and unpredictable result over the pairings of the traits in Wood. Further, Wood would be completely functional if the pairings of traits were arbitrarily rearranged as claimed. Thus, they are properly considered obvious design choices. Thus, proper rationale for the rejections was given by Examiner. An application should not be allowed, unless and until issues pertinent to patentability have been raised and resolved in the course of examination and prosecution, since otherwise the resultant patent would not justify the statutory presumption of validity (35 U.S.C. 282), nor would it "strictly adhere" to the requirements laid down by Congress in the 1952 Act as interpreted by the Supreme Court. The standard to be applied in all cases is the "preponderance of the evidence" test. In other words, an examiner should reject a claim if, in view of the prior art and evidence of record, it is more likely than not that the claim is unpatentable. Applicant further uses the terms "function", "trait", and "component" interchangeably, in his specification, page 13, paragraph 0042. Thus, Examiner's position is that the "traits" of Wood are "equivalents" to Applicant's "cognitive functions".

17. In response to Applicant's general remarks at paragraph 206, Applicant argues that his invention has a scientific principle and deserves protection under patent law. Examiner respects that Applicant is seeking the maximum protection under law for his idea. However, a "utility patent" protects the way an article is used and works. MPEP 1502.01. However, the standard of patentability has not and will not be lowered. The requirements of 35 U.S.C. 102 and 103 still apply; a rational basis will be present for any 35 U.S.C. 101 determination; the requirements of 35 U.S.C. 112 must also be met. See MPEP 2105. Just because Applicant's invention is based on some alleged underlying scientific structure does not automatically render it deserving of a



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utility patent under the rules of 35 USC §101, §102, §103, and §112. Applicant's argument directed to the scope of legal protections of patents vs. copyrights is irrelevant to whether the invention is patentable under law. Books such as the MBTI Manual are clearly protected by copyright law. Further, Applicant's specification at page 12, paragraph 0039 indicated that he has already established a copyright on the material in the application. The above patent laws and rules will clarify to Applicant what standards patent applications are held; although also deserving of protections under law, patent protection is stronger because such standards are stricter. In regards to Applicant's request for conditional assistance, see page 49, see Office Action of 4/4/2008, paragraph 19. According to MPEP 707.04(j), the practice of suggesting claim language is used when it becomes apparent to Examiner that there is patentable subject matter disclosed in the application; however, at the present time no patentable subject matter appears disclosed.

18. In response to Applicant's general remarks at paragraphs 208 & 246, regarding Examiner's alleged comments, to clarify: Examiner stated that the prior art presented in the rejection above renders the instant invention unpatentable. Examiner's position is that the specific number and nomenclature of the cognitive traits selected by Applicant is a mere design choice, because such changes do not affect the way the invention is used and works (e.g. merely changing the color or appearance of an element). A specific example of an arbitrary design choice would be merely adding a cognitive function to the list, making thirteen, ect. Examiner pointed to the prior art device of Wood as an example of others attempting to patent such a device, and further noted that many personality sorters are copyrighted if nothing else, by virtue of being published. In regards to Applicant's request for reconsideration, Examiner notes that no new ground of rejection is made in the current rejection. Examiner has considered

all the arguments presented by Applicant herein, and hereby maintains the current grounds of rejection under 35 USC §103(a), in view of Wood.

19. In regards to Applicant's remarks at paragraphs 213, 234, 236-237, 240-243, and Response to Amendments above, Examiner suggested that Applicant provide a showing of facts and evidence of non-obviousness of the specific twelve cognitive functions. The quantity of experimentation needed to be performed by one skilled in the art is only one factor involved in determining whether "undue experimentation" is required to make and use the invention. "[A]n extended period of experimentation may not be undue if the skilled artisan is given sufficient direction or guidance." *In re Colianni*, 561 F.2d 220, 224, 195 USPQ 150, 153 (CCPA 1977). See MPEP 2164.06. In this case, no evidence of experimentation has been presented; further, Applicant's "research" appears to be limited to reading and highlighting books. Examiner's position is that anyone of ordinary skill in the art could have done what Applicant has in terms of research and experimentation; thus, no unreasonable amount of experimentation was performed by the Applicant that would have produced a finding of new or unpredictable results over Wood's. See Office Action of 4/4/2008, page 13, paragraph 16, and MPEP §716.04. No evidence of any long felt need or problem or deficiency in MBTI has been established. It is insufficient for Applicant solely to recognize a problem needing solved. No evidence has been presented that others have failed to solve the problem; on the contrary; given the proliferation of personality sorters and leadership development tools on the market, Examiner's position is that there is a strong presumption that others have already solved any perceived "problems" in MBTI. Examiner's position is that Wood is a "complete" cognitive architecture system, that is the foundation for a novel cognitive development program, such as MBTI or Kiersey, to develop individual's cognitive abilities. Thus, it is not apparent where Applicant's invention fulfills the test for unexpected results; rather, it provides exactly the results, in view of the evidence of Wood

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and the apparent lack of experimental evidence provided by Applicant. None of the "significant advantages" enumerated distinguished the instant invention over Wood. Specifically, functions "not provided by MBTI" are functional with Wood by virtue of its aforementioned compatibility with a plethora of personality sorters. No evidence has been provided demonstrating how four vs. twelve vs. 83 distinct functions makes Applicant's number any more definable, observable, or quantifiable. It further appears that the traits of Wood, such as "poetical, psychic, romantic, life of the party, people pleaser," etc. are defined in familiar and user-friendly terms, rather than with psychological language. "Left-brain" and "right-brain" styles are further taught in Wood at paragraph 004. Wood and MBTI further teach pairs of functions. Applicant has failed to show evidence of why his particular pairings has any distinct advantage other than his reading some books, and a miscalculation of some permutation of possible combinations of traits suggested for inclusion by Wood. Finally, in light of Applicant's certification in MBTI and attendance at seminars, Applicant should be quite capable of explaining to Examiner how one would instruct and train an individual in a business setting to develop skills in being an MBTI "extrovert". Accordingly, Examiner's position is that no significant advantages of the instant invention over Wood have been demonstrated by Applicant. Applicant's mere statement that Wood, Buffington, Bouchard, etc. all fail to solve the same problems as Applicant's invention is his mere opinion, as above. Examiner has clearly demonstrated that Wood at least solves all Applicant's alleged problems.

20. In regards to Applicant's remarks at paragraphs 217, 222, 235, 240, 243, & 244, Examiner has previously explained that MBTI is not the closest prior art. The closest prior art to the instant invention is Wood. Thus comparisons to MBTI are not germane to the rejection at hand, and fail to show the invention's non-obviousness over Wood, the prior art used in the rejection of the claims. In response to the applicant's argument that Wood's compatibility with a

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number of personality sorters, teaches away from the applicant's invention, as explained in previous Office Actions, "the nature of the teaching is highly relevant and must be weighed in substance. A known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for the same use." *In re Gurley*, 27 F.3d 551, 554, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994). If the claims would have been obvious over the prior art because what the reference taught was useful for applicant's purpose, applicant did not distinguish the claims over the prior art, and applicant asserted no discovery beyond what was known to the art. Furthermore, "the prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed...." *In re Fulton*, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004). See MPEP 2145(X)(C)(1). The traits referenced by Examiner are not "vague" or inexact" in any way; rather, Wood specifically teaches all the Applicant's same functions plus some; merely renaming, reorganizing, or renumbering said functions would be obvious to one of ordinary skill in the art. Applicant's calculation of permutations of possible cognitive trait selections is irrelevant in view of the fact that there are still only a finite number of possible pairings of traits to try; thus it would be obvious for one of ordinary skill in the art to keep trying until an acceptable pairing of the traits is determined. This is not unreasonable experimentation as any routineer in the art, given sufficient time, manpower, and resources, could try every pairing in Wood until Applicant's claimed pairings were arrived at. Thus, Wood presents not a "teaching away" but strong evidence of obviousness to try re-pairing the disclosed traits. In this case, the compatibility of Wood is, indeed, strong evidence of obviousness, because the issue is that Wood functions as disclosed even when the number and names of the specific traits being measured is modified. This is not a "teaching away" as defined in MPEP 2145 or as asserted by Applicant. Further, the

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Wood reference provides clear evidence of selecting twelve cognitive functions in a personality sorter. Applicant has failed to provide any rationale for selecting exactly twelve of Wood's functions for inclusion into the instant invention; consequently, Examiner's position is that the choosing is a mere design choice on Applicant's behalf. Examiner submits that no allegations of "encompassing" were made. The claims are understood to be obvious in view of the evidentiary support of Wood and common sense. At no point does Examiner equate "cognitive functions" with "personality variations", which are the differences between people's personalities; the compatibility of Wood is understood to be strong evidence of obviousness, because Wood functions as disclosed even when the number and names of the specific traits being measured is modified. This is not a "teaching away" as defined in MPEP 2145 or as asserted by Applicant. Examiner has repeatedly articulated the rationale for rejection in the previous Office Actions, and maintains that Applicant has provided no substantial evidence, new or otherwise, to consider that alters the grounds of rejection presented herein.

21. In response to Examiner's use of the phrase "broadly teaches" in the Office Action, see page 22, paragraph 218, the word broadly is intended to mean that Wood teaches much more than Applicant claims, with the exception of those features which the Examiner has articulated are obvious over Wood.

22. In regards to Applicant's general remarks that matching vague and inexact references scattered throughout the references for the claimed traits, see paragraphs 219, 222, & 226-228, Examiner has noted that the exact names used by Applicant for the traits do not appear explicitly in Wood. However, Examiner's position is that Applicant's reality is the same as Wood's down-to-earth; Applicant's imagination is the same as Wood's creative; Applicant's analysis is the same as Wood's intelligent understanding; Applicant's intuition is the same as Wood's intuitive; Applicant's listening is the same as Wood's non-verbal; Applicant's expressing

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is the same as Wood's expressive; Applicant's cooperation is the same as Wood's team player; Applicant's independence is the same as Wood's loner; Applicant's caution is the same as Wood's conscientious; Applicant's courage is the same as Wood's bold; Applicant's adaptability is the same as Wood's adaptable; and Applicant's decisiveness is the same as Wood's born leader. A person of ordinary skill in the art, upon reading the Wood reference, would have recognized the common personality traits, despite the alternate names given to them. Furthermore, Wood teaches methods of determining personality traits that would have been reasonably applicable to Applicant's named traits. Wood discloses cognitive personality traits that a person of ordinary skill in the art would recognize that everyone has in some quantity, because Applicant has not presumed to have invented the human psyche. Thus, it would have been obvious to a person of ordinary skill in the art to test all different combinations of traits, and determine which *two* are the most important to leaders, as a person of ordinary skill has good reason to pursue known options within his/her grasp. Merely changing the names of the traits, which otherwise define the same cognitive concepts, or to select more or less functions that adequately define leadership traits by splitting or combining personality aspects, or to pair or reorganize functions labeled as "left-brained" or "right-brained" without any substantial physical evidence, would be obvious to one of ordinary skill in the art as a superficial design modification to the underlying invention taught by Wood. Thus, the traits referenced by Examiner are not "vague" or inexact" in any way; rather, Wood specifically teaches all the Applicant's same functions plus some; merely renaming, reorganizing, or renumbering said functions would be quite obvious. Examiner's position is that Wood clearly teaches segmenting cognitive traits into two sets by the well-known left- and right-brain divisions. See paragraph 7 above. Examiner notes that the precise number of pairs in groups is obvious over Wood as iterated in paragraph 21 above. Examiner further notes that Applicant's proffered "Factorial Equation" calculations

(presumed to mean permutations) arrive at a different answer in paragraph 226 than they did in paragraph 222. Applicant is obliged to point out exactly where in his specification drawings arguments, declarations, etc. the "problem solved" by the functions matched in pairs and the "novelty and unobviousness" of the six pairs is described. Wood teaches pairing functions in accordance with left- and right-brain cognition, in order to optimize and balance each function's corresponding opposite as a whole (Wood, paragraph 0019). It is unclear to Examiner where Applicant's Specification and Drawings describe exactly why the given naming six pairs of twelve functions of Applicant's solve any stated problem or are for any particular purpose that Wood has not already addressed. Examiner has clearly articulated his reasoning as such in rejections in Office Action of 8/1/2007, paragraph 11; Office Action of 4/4/2008, paragraph 11; Office Action of 8/7/2008, paragraph 7; and paragraphs above. No objections are currently being made, the above claims are rejected. Examiner again notes that Applicant's "Factorial Equation" argument arrives at an even different answer than in paragraphs 222 & 226. Further, using the left-brain style function in each pair first to prepare for the most appropriate use of the right-brain style function next," does not even refer to Examiner's questioning why Applicant *chose the specific names for functions* described in Wood, or selected *six pairs of twelve* functions, in that number, solves any problem or has any purpose; instead it provides only a statement of a preferred embodiment that fails to even describe why *not* to use the right-brain function first. Applicant's basis that Wood fails to teach trait magnitudes as strong or weak appears to be hinged upon Wood's alleged failure to define Applicant's exact twelve functions by name. This argument is unconvincing because Applicant's specific function names are obvious design choices over Wood.

23. In regards to Applicant's remarks at paragraphs 218, 220-223, 225, 229, 231-232, 235, & 245 Examiner has clearly articulated the evidence presented by Wood as above and

specifically related the rationale for a finding of obviousness as expressed in at least paragraph 8. Examiner has never heard of an "Encompassment" rationale. Applicant's proffered quotations from MPEP 2144.08(II) appears to specifically refer to patent applications for chemical species; further it relates only broader disclosed species by itself does not establish obviousness; that is why Examiner has provided a proper rationale. Additionally, a rationale of "Design Choice" is proper in a showing of obviousness. The particular placement of a contact in a conductivity measuring device was held to be an obvious matter of design choice. *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975). "Design Choice" is a motivation or reason for a worker in the art, without the benefit of Applicant's specification, for making the necessary changes to the reference device. See MPEP 2144.04(VI)(C). Examiner has not "admitted" unobviousness of any "secondary steps". All steps of the instant invention have been considered uniformly and in their entirety. Further, the novelty of the invention is not at issue; the claims are obvious over Wood, as articulated above, and in view of the claims as a whole. Indeed it is Applicant who is arguing the invention as disclosed, rather the invention as claimed. Additional steps such as providing surveys and providing reports, steps which are anticipated by Wood, fail to make Applicant's invention non-obvious, as asserted. Otherwise, Examiner notes Applicant's allegations of errors in previous Office Actions and other generic quotations from MPEP; however, these fail to provide arguments capable of being addressed herein. All presented claims have been rejected for obviousness. Examiner's position is that there is no claim in the application, dependent or otherwise, that is non-obvious. See *In re Kuhle*, *Id.*, and MPEP 2144.04(VI)(C). "Design Choice" is a proper motivation or reason for demonstrating obviousness. No evidence of the instant invention's "scientific nature, structure, and complexity" has been evidenced; further this argument is not germane to a rejection under 35 USC §103. Applicant appears to otherwise be reiterating arguments found elsewhere in his current



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remarks. Applicant's asserted novel principle of, "Identifying that the readily observable and distinct cognitive traits of all behaviors and actions of individuals can be attributed to one of twelve cognitive functions, can be a subset of a specific function, or can be attributed to a combination of functions," is comparable to Wood's statement at paragraph 0004: "The work of noted Swiss psychologist Carl Jung in the 1920's and '30s led him to gather that there were four functions of the mind, two pairs opposing each other, which *he labeled* "Thinking" versus "Feeling" and "Sensation" versus "Intuition." He believed that although all people possess these abilities, one of the four functions dominates a person's personality." The only difference between these findings is the number and labels given the functions. Examiner interprets Applicant's validation herein to mean experimentation. See paragraph 37 above. Anyone of ordinary skill in the art could have invested hours, cataloged references, read books, purchased books to form a library, interviewing people and having them complete surveys, and otherwise looked to anecdotal evidence demonstrating his beliefs in the personalities of people with whom he interacted everyday. Any underlying scientific theory inherent in Applicant's invention, as alleged, must also be present in the work of noted Swiss psychologist Carl Jung over 80 years ago. Thus, Examiner's position is that the above validation is well within the realm of reasonable experimentation, of which anyone of ordinary skill in the art would be capable. The descriptions of so-called "sparks of innovation" appear to be rehash of the same arguments made above. Wood demonstrates at paragraphs 0004-10 that left-brain vs. right-brain cognitive traits are well-known in the art. Wood demonstrates that providing personality surveys and developing cognitive styles is further well-known. Applicant's only innovation is merely a renaming of common personality traits disclosed by Wood; however, Applicant has provided no evidence that changing the names provides any less vague or more user-friendly names than Wood's "poetical, psychic, romantic, life of the party, people pleaser," etc.

***Conclusion***

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Giampetro-Meyer et al. *Do We Really Want More Leaders in Business?* Journal of Business Ethics Vol.17: pp. 1727–1736, 1998. Kluwer Academic Publishers, Netherlands discloses twelve cognitive characteristics of successful leaders: Integrity, vulnerability, discernment, awareness of the human spirit, courage in relationships, sense of humor, intellectual energy and curiosity, respect for the future, regard for the present, understanding of the past, predictability, breadth, comfort with ambiguity, and presence.

25. This is a substitute of applicant's earlier amendment, filed 6/2/2008. All claims are again drawn to the same invention claimed in the earlier amendment, and again could have been finally rejected on the grounds and art of record in the next Office action if they had been entered earlier. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a new first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nikolai A. Gishnock whose telephone number is (571)272-1420. The examiner can normally be reached on M-F 8:30a-5p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan M. Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kathleen Mosser/  
Primary Examiner, Art Unit 3715

1/13/2009  
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